UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REARDEN LLC, REARDEN MOVA LLC, California limited liability companies, Plaintiffs, v. THE WALT DISNEY COMPANY, a Delaware corporation, WALT DISNEY MOTION PICTURES GROUP, INC., a California corporation, BUENA VISTA HOME ENTERTAINMENT, INC. a California corporation, MARVEL STUDIOS, LLC, a Delaware limited liability company, MANDEVILLE FILMS, INC., a California corporation, Defendants.	Case No. 3:17-cv-04006-JST 3:17-cv-04191-JST 3:17-cv-04192-JST [~~PROPOSED~~] **STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR STANDARD LITIGATION**
REARDEN LLC and REARDEN MOVA LLC, Plaintiffs, v. TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation and TWENTIETH CENTURY FOX HOME ENTERTAINMENT LLC, a Delaware limited liability company, Defendants.	

1	REARDEN LLC and REARDEN MOVA LLC,
2	Plaintiffs,
3	
4	v.
5	PARAMOUNT PICTURES CORPORATION, a Delaware corporation, and PARAMOUNT HOME ENTERTAINMENT DISTRIBUTION INC. a Delaware corporation,
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7	Defendants.

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1.   PURPOSE

This Order will govern discovery of electronically stored information ("ESI") in this case as a supplement to the Federal Rules of Civil Procedure, this Court's Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

2.   COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

3.   LIAISON

The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

For each party, the ESI liaisons are as follows:

Party	Liaison
Rearden LLC	Mark Carlson
Rearden Mova LLC	Mark Carlson
The Walt Disney Company	Victor Gonzales
Walt Disney Motion Pictures Group, Inc.	Victor Gonzales
Buena Vista Home Entertainment, Inc.	Victor Gonzales
Marvel Studios, LLC	Victor Gonzales
Mandeville Films, Inc.	Victor Gonzales
Twentieth Century Fox Film Corp.	Victor Gonzales
Twentieth Century Fox Home Entertainment LLC	Victor Gonzales
Paramount Pictures Corp.	Victor Gonzales

Paramount Home Entertainment Distribution, Inc.	Victor Gonzales

4.   PRESERVATION

The parties have discussed their preservation obligations and needs and agree that

preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and

burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

a.   The parties will exchange a list of the types of ESI that they believe should be preserved and the custodians, or general job titles or descriptions of custodians (e.g., "HR head," "scientist," and "marketing manager"), for whom they believe ESI should be preserved within 14 days after this stipulated order is entered by the Court. The parties shall add or remove custodians as reasonably necessary;

b.   The parties will agree on the number of custodians per party for whom ESI will be preserved within 14 days after exchanging lists of custodians;

c.   For identified custodians, ESI created or received prior to August 7, 2017 will be preserved; ESI financial information related to the accused films will be preserved through the date of final judgment; and existing litigation holds will remain in place through the date of final judgment;

d.   Among data sources that the parties agree are not reasonably accessible for purposes of this order, the parties agree that the following need not be preserved: voicemail messages, instant messages and chats, information from mobile phones, smart phones, or PDAs that is not duplicative of data stored on servers or other reasonably accessible sources, and dynamic fields of databases or log files that are not stored or retained in the ordinary course of business;

e.   In addition to the agreements above, the parties agree data from these sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: (1) materials retained in tape, floppy disk, optical disk, or similar formats primarily for back-up or disaster recovery purpose; (2) archives stored on computer servers, external hard drives, notebooks, or personal computer hard drives that are created for disaster recovery purposes.

5.   SEARCH

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if

appropriate, they will meet and confer about methods to search ESI to identify ESI that is subject to

production in discovery and filter out ESI that is not subject to discovery.

6.   PRODUCTION FORMATS

The parties agree as follows:

a.   The form or forms in which ESI should be produced.

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     i.   ***Format for production of documents – documents existing in electronic***

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        format. The parties agree that all documents existing in electronic format

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        shall be produced in single page, Group IV tagged image file format ("TIFF"),

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        or equivalent, at a resolution of at least 300 dpi in accordance with the

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        following:

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             1.   Image files shall be produced along with Concordance/Opticon image

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                 load files linking the images to the corresponding document that

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                 indicate the beginning and ending of each document. Each image file

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                 shall be named according to a unique corresponding Bates number

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                 associated with the document. Each image file shall be branded

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                 according to the Bates number and the agreed-upon confidentiality

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                 designation. Image files shall show all text and images that would

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                 be visible in the original electronic format (native format), including

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                 redlines and speaker notes.

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             3.   For each document, an extracted text file should be provided along

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                 with its corresponding TIFF image file(s) and metadata. The file

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                 name of each extracted text file should be identical to that of the first

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                 image page of its corresponding document, followed by .txt. File

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                 names should not contain any special characters or embedded spaces.

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                 The text of native files should be extracted directly from the native

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                 file. However, if a document has been redacted, OCR of the redacted

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                 document will suffice in lieu of extracted text. Also, if extracted text

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                 is not available in the native file, the documents should be processed

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                 by an OCR tool prior to production to extract available text so that

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                 the record is searchable.

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             2.   Notwithstanding the foregoing, all documents that the producing party

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                 received from Third Parties or reproduces in whole or in part from

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                 the production files of a historical litigation should be produced in

the same manner and form, including native files and all metadata, as

the producing party received from the producing Third Party or

originally produced in the relevant historical litigation.

ii. ***Format for production of documents – hardcopy or paper documents.*** All

documents that are hardcopy or paper files shall be scanned and produced in

the same manner as documents existing in electronic format in accordance

with the following: In scanning hardcopy documents, distinct documents

should not be merged into a single record, and single documents should not

be split into multiple records (*i.e.,* hardcopy documents should be logically

unitized). The parties will use reasonable efforts to unitize documents

correctly. Metadata for such documents should include custodian information, to

the extent such information is reasonably available, and OCR.

iii. ***Production media and encryption of productions.*** Unless otherwise agreed,

the parties shall provide document productions in the following manner: The

producing party shall provide the production data via FTP, unless the volume

of the production renders FTP transfer impracticable, in which event the

production data may be produced via external hard drives. The FTP transmittal,

or physical media label as relevant, should contain the case name and number,

producing party, confidentiality designation, production date, and Bates range

being produced. The parties are encouraged to encrypt the production data

using an industry acceptable encryption method. In such a case, the producing

party shall forward the password to decrypt the production data separately

from the FTP transfer, CD, DVD, or external drive on which the production

data is saved.

iv. ***Deduplication.*** Data may be deduplicated on a global level, provided that

loose e-documents are deduplicated separately from email attachments.

Additionally, (1) attachments to e-mails shall not be eliminated from their parent

e-mails, and (2) hard-copy documents shall not be eliminated as duplicates of

responsive ESI. The identity of other custodians of de-duplicated items must be listed in the "Custodian" field of the copy of the single record that is produced. Custodians should be identified using the convention "last name_first name." A producing party shall use a uniform description of a particular custodian across productions. Multiple custodians in the "Custodian" field shall be separated by a semicolon.

    v.   ***Parent and child emails.*** The parties shall produce email attachments sequentially after the parent email. With respect to an email chain, the parties are permitted to produce the longest unique chain and the parties do not need to separately produce the lesser-included emails unless those lesser-included emails include unique attachments not included in the longest chain. If a lesser- included email includes a unique attachment, then the lesser-included email must be separately produced with the attachment.

    vi.   *Native files.* The parties agree they may produce Microsoft Excel or other spreadsheet files, CSV files (comma separated value files), files containing video and/or audio and any files that are an exception to the TIFF process in native format, along with a TIFF placeholder which will contain language indicating that the document is being produced as a Native File. Native files should be named with the beginning Bates number that is assigned to that specific record in the production. A "NativeLink" entry for each spreadsheet should be included in the .DAT load file indicating the relative file path to each native file on the production media. For documents that contain redacted text, the parties may either apply the redactions directly on the native file itself or produce TIFF image files with burned in redactions in lieu of a Native File and TIFF placeholder image. .   Other than as specifically set forth above, a producing party need not produce documents in native format. If good cause exists for the receiving party to request production of certain documents in native format, the receiving party may

1   request production in native format by providing: (1) a list of the Bates

2   numbers of documents it requests to be produced in native format; and

3   (2) an explanation of the need for reviewing such documents in native

4   format. The producing party shall not unreasonably deny such requests. If

5   a dispute arises with regard to requests for the production of files or file types

6   in native format, the parties will meet and confer in good faith to try to resolve

7   it. If the parties are unable to reach agreement with regard to requests for

8   additional documents in native-file format, the parties reserve the right to seek

9   relief from the Court. Notwithstanding the foregoing, a party may produce a

10 document in a non-native format where production in native format would

11 result in the production of privileged or otherwise non-discoverable

12 information. The parties will meet and confer regarding reasonable requests

13 for production of documents described in the foregoing sentence in a native or

14 other appropriate format.

15   vii.   *Embedded files.* The parties are not required to produce files embedded in other

16 produced documents in the first instance where doing so is burdensome. Where

17 a produced document contains embedded files that a party does not produce, the

18 party shall populate an Embedded Files metadata field indicating the presence of

19 unproduced embedded files. The parties agree to produce embedded files in

20 response to reasonable and specific requests for the production of unproduced

21 embedded files.

22   viii. *Color Images.* The producing party may produce color documents as black and

23 white documents with the receiving party having the option to obtain color

24 documents from the producing party if the receiving party requests color copies

25 of specific documents. Reasonable requests for color copies of color documents

26 produced in black and white include, but are not limited to, the following: (a)

27 the documents include schematics, diagrams, graphs, charts, etc.; (b) the

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1   documents are unclear or illegible; or (c) the color version of the document

2   serves to differentiate the information presented in the document.

3   ix.   ***Images with Poor Legibility.***   If a document is originally produced in an

4   illegible or difficult to read form, the producing party shall have the option of

5   responding by producing a native-file version of the document or producing a

6   replacement image of legible quality.   If a dispute arises with regard to

7   requests for legible images, the parties will meet and confer in good faith to

8   resolve it.

9   x.   ***Culling and Filtering.***   Each party will use reasonable efforts to filter out

10   common system files and application executable files by using a commercially

11   reasonable hash identification process.   Hash values that may be filtered out

12   during this process are located in the National Software Reference Library

13   ("NSRL") NIST hash set list. Additional culling of system file types based on

14   file extension may include, but are not limited to: WINNT, LOGS, general

15   log files (log), DRYS, C++ Program File (c), C++ Builder 6 (cpp), MP3,

16   MP4, WAV, M4a, Channel Definition Format (cdf), Creatures Object Sources

17   (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet

18   (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File

19   (NICK), Office Profile Settings (ops), Outlook Rules Wizard Fi le (rwz), Scrap

20   Object, System File (dll), temporary files (tmp), Windows Error Dump (dmp),

21   Windows Media Player Skin Package (wmz), Windows NT/2000 Event View

22   Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), Program Installers.

23   The parties agree to meet and confer regarding which file types may be

24   appropriate to cull or filter in an effort to preserve files relevant to this

25   litigation.

b. Metadata

The parties agree that load files should include, where applicable, the information listed in the Table of Metadata Fields, set forth below. However, the parties are not obligated to include metadata for any document that does not contain such metadata in the original.

Table of Metadata Fields

Field Name	Specifications Field Name	Field Type	Description Email	Description (E-Files/ Attachments)
Field Name	Specifications Field Name	Field Type	Description (Email)	Description (E-Files/Attachments)
Bates Begin	Bates number	Text	The Bates number associated with the first page of an email	The Bates number associated with the first page of a document
Bates End	Bates number	Text	The Bates number associated with the last page of an email	The Bates number associated with the last page of a document
BegAttach	Bates number	Text	Beginning document number of family unit	Beginning document number of family unit
End Attach	Bates number	Text	Ending document number of family unit	Ending document number of family unit
Attachment Count	Attachment_Count	Text	Number of attachments	

Field Name	Specifications Field Name	Field Type	Description Email	Description (E-Files/ Attachments)
Confidential Designation		Text	The confidentiality designation endorsed on the document. If no designation is present, the value will be left blank.	The confidentiality designation endorsed on the document. If no designation is present, the value will be left blank.
Redaction		Text	"Yes" provides an indication as to whether the email contains any text redacted by the party	"Yes" provides an indication as to whether the document contains any text redacted by the party
Email Date Received		Date (MM/DD/YYYY format) – indicate time zone (*e.g.*, PST)	The date the email was received	For email attachments, the date the parent email was received
Email Date Sent		Date (MM/DD/YYYY format) – indicate time zone (*e.g.*, PST)	The date the email was sent	For email attachments, the date the parent email was sent
Email Time Received		Time (HH:MM:SS AM/PM) – indicate time zone (*e.g.,*	The time the email was received	For email attachments, the time the parent email was received
Email Time Sent		Time (HH:MM:SS AM/PM) – indicate time zone (*e.g.,*	The time the email was sent	For email attachments, the time the parent email was sent

Field Name	Specifications Field Name	Field Type	Description Email	Description (E-Files/ Attachments)
Email From	Sender	Text	The display name of the sender of an email	N/A
Email To	Recipient	Text	The display name of the recipient(s) of	N/A
Email CC	CC	Text	The display name of the copyee(s) of an email	N/A
Email BCC	BCC	Text	The display name of the blind copyee(s) of an email	N/A
Email Subject	Subject (e-mail)	Paragraph	The subject line of an email	N/A
Author	Author	Text	N/A	If available, the author field in electronic loose documents.
Custodians	Custodian	Paragraph	The custodian of an email, any custodians of deduplicated copies	The custodian of a document, any custodians of deduplicated copies.

Field Name	Specifications Field Name	Field Type	Description Email	Description (E-Files/ Attachments)
Date Created		Date (MM/DD/YYYY format) – indicate time zone (*e.g.*, PST)	N/A	Date the file was created
Date Modified		Date (MM/DD/YYYY format) – indicate time zone (*e.g.*, PST)	N/A	Date the file was last modified
Time Created		Time (HH:MM:SS AM/PM) – indicate time zone (*e.g.*, PST)	N/A	Time the file was created
Time Modified		Time (HH:MM:SS AM/PM) – indicate time zone (*e.g.*, PST)	N/A	Time the file was last modified
File Name		Paragraph	N/A	Original file name
File Type		Text	Field should indicate email file type (e.g., "Microsoft Outlook Message Mail")	A description of the type of file (e.g., "Microsoft Excel 2000")
MD5 HASH	Unique ID		A calculated value unique to each identical file - the file "fingerprint" –using MD5 Hash	A calculated value unique to each identical file-the file "fingerprint"— using MD5 Hash

Field Name	Specifications Field Name	Field Type	Description Email	Description (E-Files/ Attachments)
Parent ID	Parent Documents BatesBegin	Text	The Bates number associated with the first page of the Parent email	The Bates number associated with the first page of the Parent document
Text Link			Full path to the supplied text (to be left blank when no text file is supplied).	Full path to the supplied text (to be left blank when no text file is supplied)
Native Link			Full path to the supplied native (to be left blank when no Native Format file is supplied)	Full path to the supplied native (to be left blank when no Native Format file is supplied)

     c.   If particular documents warrant a different format from that described in subparts a-b above, then the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the search ability of documents as part of the document production process.

7.   PHASING

    When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase the production of ESI. The parties will exchange lists prioritizing initial ESI production after the disclosures and agreements required in Section 4, above. Following the initial production, the parties will continue to prioritize the order of subsequent productions.

8.   DOCUMENTS PROTECTED FROM DISCOVERY

      a.   Protection against waiver of privilege or other protection from discovery shall be governed by the Stipulated Protective Order. The parties do not waive the right to conduct a full and comprehensive review for privilege and other protections.

      b.   Communications between or among a party's counsel-of-record or between or among a party and its counsel-of-record that post-date May 1, 2017, need not be placed on a privilege log.

      c.   If a document is produced with redactions, the redaction stamp shall include redaction language specifying the reason for redaction (*e.g.,* "AC/WP," "Privacy," "Non-responsive," etc.), and shall also be separately logged. If a party redacts a document, the accompanying metadata should so indicate. If an attachment to an email is withheld in its entirety, a slip-sheet placeholder for the withheld family member shall include language specifying the reason (*e.g.,* "AC/WP," "Privacy," "Non-responsive," etc.) and the accompanying metadata should so indicate, and shall also be separately logged .

9.   MODIFICATION

      This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

      IT IS SO STIPULATED, through Counsel of Record.

DATED: January 4, 2019   HAGENS BERMAN SOBOL SHAPIRO LLP

                  By: ___*/s/ Mark Carlson*[1]_____
                        Mark Carlson
                  Attorneys for Plaintiffs

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[1] Signed electronically by Erin J. Cox with the concurrence of Mark S. Carlson, pursuant to L.R. 5-1(*i*)(3).

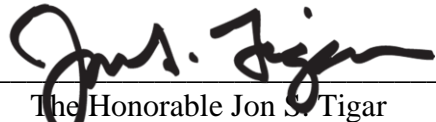DATED: January 4, 2019   MUNGER, TOLLES & OLSON LLP

By: _/s/ Erin J. Cox_____
                    Erin J. Cox

Attorneys for Studio Defendants

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2   Pursuant to the foregoing stipulation, **IT IS SO ORDERED**.

3   DATED: January 4   , 2019   _____
                                            The Honorable Jon S. Tigar
4   United States District Judge

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